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BEFORE THE ARIZONA CORPORATION

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AZ CORP COMMISSION  
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IN THE MATTER OF THE COMPLAINT  
OF BUREAU OF INDIAN AFFAIRS,  
UNITED STATES OF AMERICA,  
AGAINST MOHAVE ELECTRIC  
COOPERATIVE, INC. AS TO SERVICES  
TO THE HAVASUPAI AND HUALAPAI  
INDIAN RESERVATIONS.

DOCKET NO. E-01750A-05-0579

NOTICE OF FILING

Mohave Electric Cooperative, Inc. ("MEC"), by and through its attorneys  
hereby gives notice that it has filed this date the attached:

1. Transcript of questions asked by Representative Ed Pastor to the Bureau of Indian Affairs during March 29, 2007 Appropriations Committee Hearing, and responses of Mr. Carson and Mr. Ragsdale of the Bureau of Indian Affairs;
2. Written questions presented by Representative Ed Pastor for the Record to Bureau of Indian Affairs and Answers provided by the Bureau of Indian Affairs;
3. Email exchange between Michael A. Curtis, Legal Counsel for Mohave Electric Cooperative, Inc., and Jan Bennett, Vice President Customer Service
4. of Arizona Public Service Company, regarding "Re: Emergency Planning and Planned July 12, 2007 Meeting to Discuss Same"; and

5. Permit allowing Asplundh Tree Experts, as Mohave assignee contractor, to come on to the Hualapai Reservation to survey, inspect and prepare cost estimates and scope of work for tree trimming on right-of-way from Mile Markers 7-30.

DATED this 9 day of July, 2007.

CURTIS, GOODWIN, SULLIVAN,  
UDALL & SCHWAB, P.L.C.

By:

Michael A. Curtis  
William P. Sullivan  
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Attorneys for Mohave Electric Cooperative, Inc.

1 PROOF OF AND CERTIFICATE OF MAILING

2 I hereby certify that on this 9<sup>th</sup> day of July, 2007, I caused the foregoing  
3 document to be served on the Arizona Corporation Commission by delivering the original and  
4 thirteen (13) copies of the above to:

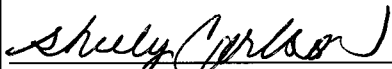
5 Docket Control Division  
6 ARIZONA CORPORATION COMMISSION  
7 1200 West Washington Street  
8 Phoenix, Arizona 85007

9 Copies of the foregoing hand delivered/mailed  
10 this 9<sup>th</sup> day of July, 2007 to:

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" I21Mr. " T4Dicks." T1 All right. Mr. Pastor.

" I21Mr. " T4Pastor." T1 Thank you, Mr. Chairman. Gentlemen, welcome.

" I21Mr. " T4Cason." T1 Thank you.

" I21Mr. " T4Pastor." T1 I am going to ask you questions within my time that deal in particular with some of the Arizona tribes.

" I21Last November I sent a letter, I signed, as well as some members from the Arizona delegation, we have had a problem in the Havasupai with their power outages. The BIA took over the lines and distribution of power into the Grand Canyon, into the reservation.

" I21Mr. " T4Cason." T1 Uh-huh.

" I21Mr. " T4Pastor." T1 And over the years they have had power outages. As you know, they are very north, and they have extreme temperatures and not having power in many cases can be very detrimental in terms of their, it could be life threatening as you well know in some cases.

" I21Mr. " T4Cason." T1 Uh-huh.

" I21Mr. " T4Pastor." T1 The response was very, you know, non-committal, said thank you for the letter, and we will look into it. Probably what I do to my constituents.

" I21So the question I would ask in your budget, knowing that we have that problem in Arizona, in your budget are you addressing the problem with the Havasupai and their power problems? Since you own the lines and have the responsibility for the power transfer.

" I21Mr. " T4Cason." T1 Congressman, honestly, off the top of my head I do not recall having any specific discussion about that. We do have, I guess, programs that have that as a programmatic area, but I do not remember having a discussion about it specifically. So we would have to get back to you.

" I21Mr. " T4Pastor." T1 Well, maybe I can resubmit my letter.

" I21Mr. " T4Ragsdale." T1 Mr. Chairman, I am Pat Ragsdale. I am aware of the issue. In the 1970s we afforded funding to construct the power line down into Havasupai to provide electricity to our BIA school. Since then the service has been expanded to the local population and to the Indian Health Service, and I think we use it for one of our jails down in the bottom of the Grand Canyon.

" I21The responsibility to provide power is a cooperative utility chartered in Arizona, who have proposed to let go of the service or discontinue the service because it is not cost effective to provide the service in the bottom of the Grand Canyon. We are working with

one of the Arizona commissions to determine whether or not the utility can legitimately let go of this service. I understand that most public utilities are required to provide service to those areas that are both profitable and not profitable, and so that is where we are with regards to the power line.

" I21In the meantime, the Bureau of Indian Affairs has been trying to serve the population down there by doing repairs, operation and maintenance repairs on those power lines in the meantime.

" I21Mr. " T4Pastor." T1 If, in fact, the corporation commission determines and the co-op cannot deliver, do you think BIA has a responsibility to provide power to Havasupai, not only the jail and all the amenities but also the power down to be used by the tribal members?

" I21Mr. " T4Ragsdale." T1 Well, that is a good question, Congressman. It is a policy\_\_

" I21Mr. " T4Pastor." T1 I try to ask good questions, so, you know, I do not want to waste your time.

" I21Mr. " T4Ragsdale." T1 I think we have an obligation to provide service for the requirements of the Bureau of Indian Affairs and Indian Health Service. The expansion to provide utility service to the greater population is something we would have to look at.

" I21Mr. " T4Pastor." T1 Well, obviously, since they are Native Americans, it would be under at least some relationship, some trustee, and I think you would have some responsibility.

" I21Well, thank you. I will resubmit the letter and hopefully we can go into greater detail.

" I21As you were talking about the meth and the problems that you have, one of the problems that has come to my attention is the incarceration of these juveniles.

" I21Mr. " T4Cason." T1 Uh-huh.

" I21Mr. " T4Pastor." T1 After adjudicated and at least there is a number of tribes along the Colorado River, as well as to the east of the Colorado River, who, there is no facility, no BIA facility that would house them. So they have the responsibility of having them incarcerated in different locations. Sometimes it works out. I think today\_\_

" I21Mr. " T4Dicks." T1 Will the gentlemen yield?

" I21Mr. " T4Pastor." T1 Yes.

" I21Mr. " T4Dicks." T1 Are these the children of somebody that\_\_

" I21Mr. " T4Pastor." T1 They are juveniles. Yes. They are coming off the reservation.

" I21Mr. " T4Dicks." T1 Arrested for meth.

" I21Mr. " T4Pastor." T1 Well, meth or other crimes conducted under meth, but they are juveniles who have been adjudicated and now are incarcerated or will be incarcerated.

" I21Mr. " T4Dicks." T1 The state welfare system does not take care of them?

" I21Mr. " T4Pastor." T1 No. These are incarcerated. There has to be a juvenile facility that would incarcerate them.

" I21Mr. " T4Cason." T1 Uh-huh. We do have juvenile detention facilities in Indian country, and one of the things that we found is since the IG's report that I mentioned earlier, is that in some cases we had not satisfactorily provided for site and sound separation between\_\_

" I21Mr. " T4Pastor." T1 Right.

" I21Mr. " T4Cason." T1 \_other adults.

" I21Mr. " T4Pastor." T1 Right.

" I21Mr. " T4Cason." T1 And in those cases\_\_

" I21Mr. " T4Pastor." T1 And you are overpopulated in some instances?

" I21Mr. " T4Cason." T1 In some cases. Yeah.

" I21Mr. " T4Pastor." T1 So these kids have to travel sometimes great distance from the family to be incarcerated in a BIA facility, and their facilities have the problems that have just been expressed. And so now some of the tribes are required to put these juveniles in private institutions. They are incarcerated like in private jails.

" I21Mr. " T4Cason." T1 You shop for beds.

" I21Mr. " T4Pastor." T1 Right. So but what is happening is that the responsibility of incarceration, I think, falls on the BIA. Well, in many cases the tribal resources have to be used to pay for the incarceration, expecting and hoping that they will be reimbursed by BIA. And so it is a line item that many of these tribes now find themselves having to pay for the incarceration of their tribal members who are juvenile, and yet the responsibility, which falls on BIA, they are having to meet with the resources.

" I21So as they have to pay more for incarceration in other places, some of their budgets are, you know, are diminished for other purposes as health or education.

" I21And so I guess I have two questions. One, is it possible to have the BIA jointly with whoever needs to be involved to do a planning session or to deal with some of these tribes and westerners along the Colorado River that desperately need a correction system to see how they could have some priority placed in their needs and to have a facility that would\_\_

" I21Mr. " T4Cason." T1 Uh-huh.

" I21Mr. " T4Pastor." T1 \_be multi-tribunal use, because obviously if you make them too small\_\_

" I21Mr. " T4Cason." T1 Uh-huh.

" I21Mr. " T4Pastor." T1 \_the cost benefit will not be there\_\_

" I21Mr. " T4Cason." T1 Uh-huh.

" I21Mr. " T4Pastor." T1 \_as it deals with guards and\_\_

" I21Mr. " T4Cason." T1 Right.

" I21Mr. " T4Pastor." T1 \_buildings and such. But I think a multi-tribe correctional system is something that they would like to talk about.

" I21Mr. " T4Cason." T1 Uh-huh.

" I21Mr. " T4Pastor." T1 And secondly, since that is a long-term solution, a possible long-term solution, what can we do or what can the tribes do to look for the BIA to reimburse them in monies that are owed for past incarcerations or past expenses for incarceration?

" I21Mr. " T4Cason." T1 Uh-huh. Okay.

" I21Mr. " T4Pastor." T1 Do you have line items of the budget to deal with it?

" I21Mr. " T4Cason." T1 We have line items in the budget to deal with detention facilities, which would include both adult facilities and juvenile detention. The monies that we have in those line items get fully extended on an annual basis to provide for services like this. We have a fairly broad number of requests for additional funding out of the program that we cannot respond to completely.

" I21One of the things I would suggest to you, the guy in BIA who does this program is Gil Rivera, and Gil is a person that we managed to recruit from the Bureau of Detentions from Department of Justice. So he had on the order of 30 years experience doing this. We

brought him over to try and improve our program, and he has been doing a great job getting there.

" I21 The resources that we have at our detention facility program right now are stretched, and we are trying to prioritize where we place them. I would say we have an open-door policy that if any of your Arizona tribes want to get more information about our program, where we are spending our money, what proportion goes to Arizona versus everybody else, we are more than happy to do that. You could call Gil or Chris Chaney, who runs the law enforcement program overall and find those answers. And we are happy to do that.

" I21 Mr. " T4 Pastor." T1 We will call Mr. Rivera but\_\_

" I21 Mr. " T4 Cason." T1 Okay.

" I21 Mr. " T4 Pastor." T1 \_the purpose is not going to be to question where the money is being spent or, you know, how it is being spent. It is going to be does it make sense if you take what should have been reimbursed to these number of tribes, would it be better at a cost-benefit ratio, to build a facility that would deal with the tribes, you know, in that area so that you would get the proper incarceration, the proper education.

" I21 One of the problems is, Mr. Chairman, when you take these kids too far from the reservation is that the families have no contact, and if there is no contact, you begin to lose that bond. And so many of these tribes are concerned that when they are sent off out of state that there is very little relationship to them. But if there was some proximity where they could maintain the family bond, the tribal bond, that maybe rehabilitation would work.

" I21 And so I will call Mr. Rivera, but it will be to talk about the possibility of looking to the various tribes in Arizona along the Colorado River\_\_

" I21 Mr. " T4 Cason." T1 Uh-huh.

" I21 Mr. " T4 Pastor." T1 \_to see if it is feasible to do a multi-tribal facility that\_\_

" I21 Mr. " T4 Cason." T1 Uh-huh.

" I21 Mr. " T4 Pastor." T1 \_would deal with corrections.

" I21 Mr. " T4 Cason." T1 Yeah. We are actually looking at that. The strategy that we are exploring at the moment is basically developing a regional jail concept so you can make a larger, more efficient facility that is in the general area and house inmates from several tribes so it is in the general area but we can actually afford it.

" I21 The structure of what we have right now is a little bit inefficient because we have generally small jails scattered in a lot of places, and they do not tend to be as cost



effective to run. And so we are looking at the idea of trying to identify places where we could do a regional jail for the longer-term prisoners and try to keep them within areas. So if you have ideas on that, we would be happy to hear about that.

" I21Mr. " T4Pastor." T1 We have ideas, you have a person, and we will get together.

" I21Mr. " T4Cason." T1 That sounds great.

" I21Mr. " T4Pastor." T1 I yield back, Mr. Chairman.

" I21Mr. " T4Dicks." T1 Thank you. Mr. Udall.

" I21Mr. " T4Udall." T1 Thank you very much, Mr. Chairman. I want to follow up on what Mr. Pastor asked here, because I think he makes a really important point.

Questions for the Record  
Representative Ed Pastor  
Bureau of Indian Affairs  
March 29, 2007

#### **Law Enforcement**

As you know, the Tohono O'odham Nation sits on the border in Arizona. And, I know you also realize they do a sizable service in helping control the border, and this has a significant impact on their finances and budget.

**Pastor Question 1:** Is the BIA doing anything to help the Nation financially to reimburse them for their public safety activities associated with monitoring the border?

**Answer:** The Bureau's FY 2005 budget request included an additional \$1.4 million for the Tohono O'odham Nation (TON) to hire additional tribal police officers to address the law enforcement border issues on the TON Reservation. The requested increase was approved by Congress and added to the annual funding provided to the Nation.

#### **Other**

On November 14, 2006, I along with two colleagues from Arizona wrote the Secretary of the Interior concerning the responsibility for providing electricity to the Havasupai Tribe in Arizona. The response from the Principal Deputy Assistant Secretary - Indian Affairs, Michael Olsen, failed to answer any of the questions included in the letter. Accordingly, I am seeking a response from the Bureau of Indian Affairs so that efforts can be made to avoid a repetition of the catastrophe which occurred in the bottom of the Grand Canyon in the Supai Village this past summer.

**Pastor Question 2:** Please state for the record the amount of annual funding since 1965 that has been sought by the BIA and has been placed in the budget submitted to Congress for the rehabilitation, repair, overhead and maintenance of the BIA retail electric system delivering electricity to the Havasupai and also the Hualapai.

**Answer:** This question requires information on a matter currently in litigation. Due to the ongoing litigation, we are not at liberty to discuss any aspect of the matter.

**Pastor Question 3:** Please provide copies of any studies or plans that have been developed by the BIA, the Department of Interior or any other federal agency or department since 1965 to provide reliable electric service to the Havasupai and Hualapai Nations. Please state which of these plans were implemented, the extent of their implementation and reasons behind selecting the particular plan and implementation thereof.

**Answer:** This question requires information on a matter currently in litigation. Due to the ongoing litigation, we are not at liberty to discuss any aspect of the matter.

**Pastor Question 4:** Please state what present plans are in place or are being considered to enhance the reliability of electric service to the Havasupai and Hualapai Nations in the future, the cost and the anticipated source of funding. Please state the expense of the repairs made to the electric system from the Long Mesa Substation into the Canyon during 2006 (prior to the summer outage and after the summer outage). Please provide the estimated expense of completely rehabilitating the retail electric system within the Canyon and the basis of the estimate.

**Answer:** This question requires information on a matter currently in litigation. Due to the ongoing litigation, we are not at liberty to discuss any aspect of the matter.

**Pastor Question 5:** Please state the number of emergency generators that the BIA has provided at the Long Mesa Substation on the edge of the Canyon and the number placed in the bottom of the Grand Canyon to meet the needs when a catastrophic failure occurs such as the electric system failure during the summer of 2006. If none are currently in place, please describe when generator were last available at the Long Mesa Substation to provide back-up electrical service, why they were removed and abandoned and if there are any plans to secure them for future emergencies. Please also state the estimated expense of a new generator at Long Mesa Substation fully interconnected and adequate to meet the needs of the Havasupai in the event of an emergency such as that recently experienced when there was a failure of the 70-mile transmission line. What is the basis of the estimate?

**Answer:** This question requires information on a matter currently in litigation. Due to the ongoing litigation, we are not at liberty to discuss any aspect of the matter.

**Pastor Question 6:** Please identify the program or the plan, if any, the BIA had in place in the summer of 2006 to respond to a prolonged electrical outage on the Havasupai Reservation and to protect the Indians dependent thereon (e.g., diabetics, the elderly and those with illnesses or other infirmities). Describe how the plan was implemented this last summer, or if no plan existed, the basis and nature of the BIA's response to the prolonged summer outage. Describe the emergency funding relied upon to meet the needs created by the summer emergency.

**Answer:** This question requires information on a matter currently in litigation. Due to the ongoing litigation, we are not at liberty to discuss any aspect of the matter.

**Pastor Question 7:** If no program or plan was in place in the summer of 2006 to respond to a prolonged electrical outage, what steps has the BIA, the Department of Interior, or other governmental agency or department taken to develop such a program or plan for future emergencies?

**Answer:** This question requires information on a matter currently in litigation. Due to the ongoing litigation, we are not at liberty to discuss any aspect of the matter.

**Pastor Question 8:** Please state whether the policy decision has been made to take steps to divest or abandon the BIA's interest in the electric system and utility responsibility on and

to the Hualapai and Havasupai Nations. If so, when was the decision made and what steps have been and are being taken to implement the policy? If no such policy decision has been made, is one being considered now, or has it been considered in the past?

**Answer:** This question requires information on a matter currently in litigation. Due to the ongoing litigation, we are not at liberty to discuss any aspect of the matter.

**Pastor Question 9:** Does the BIA or the Department of Interior believe that Mohave Electric Cooperative (a member owned, non-profit Arizona electric distribution entity) intentionally assumed the responsibility for the delivery of electricity to any portion of the Hualapai and Havasupai Nations or to bear the costs of maintaining and repairing the 70-mile line that enables the BIA to secure central station generation for the Hualapai and Havasupai Nations. If so, please provide copies of the documents, including internal documents and memoranda that demonstrate such intent.

**Answer:** This question requires information on a matter currently in litigation. Due to the ongoing litigation, we are not at liberty to discuss any aspect of the matter.

**Pastor Question 10:** Has the BIA or the Department of Interior made a policy decision beginning with BIA support of the San Carlos Irrigation Project electric divestiture in the late 1980's to try to compel Mohave Electric Cooperative to assume, unintentionally or against its will, a general utility responsibility for the delivery of electricity to any portion of the Hualapai and Havasupai Nations or to bear the costs of maintaining and repairing the 70-mile line that enables the BIA to secure central station generation for the Hualapai and Havasupai Nations. If so, please provide the rationale for supporting such a policy, including copies of all documents, correspondence, and memoranda that discuss the policy.

**Answer:** This question requires information on a matter currently in litigation. Due to the ongoing litigation, we are not at liberty to discuss any aspect of the matter.

**Pastor Question 11:** Please state whether the Hualapai and Havasupai Nations would have more reliable electric service in the summer of 2006 and today if the BIA had accepted ownership of (at no expense) and only the subsequent responsibility to operate, maintain, repair and replace the 70-mile line that enables the BIA to secure central station generation for the Hualapai and Havasupai Nations when the line was tendered by Mohave Electric Cooperative in 2003.

**Answer:** This question requires information on a matter currently in litigation. Due to the ongoing litigation, we are not at liberty to discuss any aspect of the matter.

**Pastor Question 12:** Please state the reasons why the BIA did not and will not assume ownership of the 70 mile line that enables the BIA to secure central station generation for the Hualapai and Havasupai Nations.

**Answer:** This question requires information on a matter currently in litigation. Due to the ongoing litigation, we are not at liberty to discuss any aspect of the matter.

**Pastor Question 13:** Please state whether the BIA is willing to reimburse Arizona Public Service (APS), UniSource, Mohave Electric and/or the Western Area Power Administration for the expense of the overhead, maintenance and repair of the 70-mile line that enables the BIA to secure central station generation for the Hualapai and Havasupai Nations.

**Answer:** This question requires information on a matter currently in litigation. Due to the ongoing litigation, we are not at liberty to discuss any aspect of the matter.

**Pastor Question 14:** Please state whether there is an express provision in the BIA budget requests submitted to OMB or in the Administration's budget concerning provision of funding for overhead, maintenance and repair of the 70-mile line and the Havasupai electric system and if not, why not. Please provide the estimated expense of annual maintenance of the 70-mile line and the basis of the estimate.

**Answer:** This question requires information on a matter currently in litigation. Due to the ongoing litigation, we are not at liberty to discuss any aspect of the matter.

**Pastor Question 15:** Please acknowledge that the setting of rates for the delivery of electric service by the BIA to the Havasupai, the Hualapai, and the San Carlos Irrigation Project is a matter vested within the discretion of the Agency.

**Answer:** This question requires information on a matter currently in litigation. Due to the ongoing litigation, we are not at liberty to discuss any aspect of the matter.

#### **Law Enforcement**

I am concerned that the BIA does not use an objective funding formula for distributing public safety dollars. Instead, I understand that BIA uses "historical precedent" as the basis for the distribution of these funds. Using "historical formulas" does not seem equitable, fair, or justifiable.

**Pastor Question 16:** Please explain how the current formula is determined and how you have arrived at such a low allocation for the Navajo?

**Answer:** When law enforcement funding was moved out of Tribal Priority Allocations in FY 1999, it retained the underlying base funding amounts by tribe/location. The tribes determined, with BIA concurrence, that the levels of funding in place at the time represented the most accurate reflection of collective need across the nearly 200 tribal law enforcement programs. In the following years, numerous tribal consultations and studies were undertaken in pursuit of a more equitable or effective distribution methodology for the base funding. Efforts revealed that every proposed formula re-distribution of base funding created significant areas of concern for some tribes, and none would achieve a greater level of accuracy in meeting tribal-specific needs across the board.

In the past few years, as data collection and reporting capabilities of tribes have improved, funding increases have been requested by BIA to specifically address high crime areas in Indian country. Clearly, the distribution methodology used would be critical to accomplishing the purpose of the additional funding. As a result, the BIA undertook an analysis of all law enforcement agencies in Indian country based on the following criteria to determine levels of need:

- Population to officer ratios compared to similarly located programs
- Presence of methamphetamine and other illegal drugs within the community
- Crime rates, especially violent crimes, compared to national averages, and
- Proximity to international borders.

The BIA used this analysis to determine the distribution of \$3.9 million in additional funding provided by Congress in 2006, and intends to use a similar methodology to distribute future funding increases.

Currently, all BIA law enforcement funding is distributed in accordance with this two tiered methodology, which includes a base component to ensure the varied needs of individual tribes are met with resource stability, and an incremental component to target funding increases to the areas of greatest emerging need.

**Pastor Question 17: Wouldn't it make more sense for the BIA to use an objective formula for the distribution of public safety dollars that takes into account on-reservation population, land area, crime rates or economic situations?**

**Answer:** Beginning in 2006 and forward, BIA is using a methodology for distribution of funding that includes a base component to ensure the varied needs of individual tribes are met with resource stability, and an incremental component to target funding increases to the areas of greatest emerging needs.

**Pastor Question 18: Please report back to this Committee with an explanation of the current funding criteria, and please provide your plan for implementing an updated formula based on objective criteria within 60 days.**

**Answer:** BIA can provide within 60 days the allocation of 2007 law enforcement funding using a base component to ensure the varied needs of individual tribes are met with resource stability, and an incremental component to target funding increases to the areas of greatest emerging needs.

Congress has allocated dollars to address detention facility repair and renovation. However, the BIA spends nearly all of its detention facility repair and renovation dollars on BIA and not tribal facilities. It is clear that both BIA and tribal detention facilities are in terrible shape.

## **Detention Centers**

**Pastor Question 19: Please explain why the BIA expends these dollars almost solely on BIA facilities, when places like the Navajo Nation, that owns its own decaying and dangerous facilities, receive virtually nothing?**

**Answer:** The BIA Public Safety and Justice (PS&J) construction program funds facility improvement and repair (FI&R) and related projects and needs at Bureau-owned law enforcement detention and fire protection facilities in Indian Country. The Bureau owns and funds 59 detention facilities and is responsible for funding staffing, operations and maintenance (O&M), and for FI&R at these facilities. The Bureau facilities are operated either by the Bureau or the Tribe under contract, grant or compact.

In addition, there are 34 tribally-owned and operated detention facilities. The tribes are responsible for FI&R and O&M costs for these facilities. Tribes can request funds for staffing and O&M of facilities, however funds are committed to bureau owned facilities and new facilities completed by the Department of Justice.

Through its appropriations, the Department of Justice, from FY 1997 to FY 2002, provided funds to Tribes on a cost sharing basis for major projects. This funding enabled various tribes to build 20 detention facilities. The Bureau provides funds for staffing and facilities operations and maintenance for these facilities on an equitable pro-rata based on funding accountability and total inventory of facilities.

**Pastor Question 20: Does this not violate the BIA's mission to fulfill trust responsibilities and promote self-determination on behalf of tribal governments?**

**Answer:** The Bureau's operating appropriation includes funding to support O&M and staffing needs of both Bureau- and tribally-owned public safety and justice facilities. However, to date, the BIA has been appropriated construction funding to support FI&R needs of Bureau-owned facilities only. For the Bureau-owned facilities, a prioritized list of projects has been established for the PS&J FI&R program. As a result, detention centers have the highest funding priority; the second priority is for holding cell facilities, and the third funding priority is for law enforcement administrative offices and court facilities. Those detention facilities in the worst conditions receive the highest funding priority. To support this effort, work plans, financial program plans, and preventative maintenance plans are developed by each agency location for each detention centers. These plans ensure that funds are expended for the highest priority deficiencies at each location.

**Pastor Question 21: How soon can you establish a formula to allocate detention dollars fairly among the neediest facilities?**

**Answer:** The formula to allocate detention facilities is determined by each agency location with detention centers as the highest priority, the second priority is holding cells, and third is law enforcement administrative offices and court facilities.

**Pastor Question 22:** Please report back to this Committee on your progress towards establishing a fair funding formula within 60 days.

**Answer:** BIA can provide within 60 days the allocation of the 2007 funding for detention centers.

#### **IG Report on Detention Centers**

In 2004, the Department of Interior Inspector General issued a scathing report "Neither Safe Nor Secure" which outlined the deplorable condition of detention facilities throughout Indian Country. The report stated that, "BIA's detention program is riddled with problems and, in our opinion, is a national disgrace with many facilities having conditions comparable to those found in third-world countries. In short, our assessment found evidence of a continuing crisis of inaction, indifference, and mismanagement throughout the BIA detention program." The 2004 Report issued recommendation #16, which stated that Dept. of Interior and BIA should develop strategic plans for jail replacement and renovation, and that DOI should assist BIA in developing a comprehensive needs assessment to ensure jails are built and sized appropriately.

**Pastor Question 23:** In the three years since Report has been issued, has DOI or DOJ developed a strategic plan for jail replacement?

**Answer:** The BIA is beginning to develop a needs assessment for replacement, repair and renovation of detention and law enforcement centers. The project will involve collecting data on current facility conditions as well as demographic data. This information will be used to develop long range plans to improve, replace and repair detention centers. Demographic data including incarceration rates will be used to design facilities to ensure they are built and sized appropriately. However, it should be noted that to date, the BIA has been appropriated funding for detention facility improvement and repair, not new jail construction.

**Pastor Question 24:** Has DOI or DOJ conducted a comprehensive needs assessment?

**Answer:** As mentioned previously, the DOI is beginning to develop a long range master plan. We are not able to provide a response for the Department of Justice.

**Pastor Question 25:** How much funding has DOJ or DOI provided for jail construction since the Report was issued?

**Answer:** Construction of new detention facilities in Indian country is funded through DOJ grants to tribes; not within BIA's budget. From FY 1999 to 2006, DOJ provided over \$120 million in grants to Tribes to rehabilitate or replace tribal detention centers in Indian Country. The BIA manages a Public Safety and Justice (PS&J) Facility Improvement and Repair (FI&R) program that funds major and minor FI&R projects at BIA owned detention centers each year. In response to the IG report published in 2004, funding for this program was increased from \$1.4 million in 2004 to \$3.8 million in 2005, and increased an additional \$4.3 million in 2006. The PS&J FI&R program is currently funded at \$8.1 million. Total funding for this program from



FY 2005 through the FY 2008 request is over \$28 million. Planned PS&J FI&R projects are listed in priority ranking order within the BIA FY 2008 - 2012 Five Year Deferred Maintenance and Construction Plan published in the FY 2008 Indian Affairs Budget Justification beginning on page IA-CON-SUM-11.

#### **Detention Centers**

The Navajo Nation has a population of more than 250,000 spread over an area larger than West Virginia. Also, the Navajo Nation includes over one-third of the national on-reservation population of Indian Country. However, the Navajo Nation has only a total of 82 available detention beds for its inmates. Many inmates serve only a portion of their sentences due to the lack of available detention facilities. It is obvious that the Navajo Nation needs funding for new detention facilities, yet BIA and the DOJ have not provided the necessary funding, or provided solutions for rebuilding the Navajo Nation jails.

**Pastor Question 26: Has the BIA determined how many additional detention facilities are needed in Indian Country?**

**Answer:** The Bureau of Indian Affairs is beginning to develop a needs assessment for replacement, repair and renovation of all Indian country detention facilities. A determination on how many additional detention facilities are needed will be based on the data collected during the assessment.

**Pastor Question 27: How will the BIA assess the need for repairs and for new construction of detention facilities in Indian Country?**

**Answer:** Currently the BIA determines repair and renovation priorities based on overall condition of facilities and program priorities. The Bureau has not been funded for new construction of detention facilities.

**Pastor Question 28: Does the BIA have a priority list of the sites in Indian country in most desperate need for new detention facilities?**

**Answer:** Currently the Bureau does not have a priority list for new detention center construction because the BIA does not receive funding for new detention center construction. The Bureau is beginning to develop a needs assessment to make long range determinations for repair, replacement and renovation of detention centers.

**Pastor Question 29: Does the BIA have a plan for constructing detention facilities in the areas with the most need? How will the needed new construction be funded?**

**Answer:** As previously mentioned, the Bureau is beginning to develop a long range facilities detention replacement, repair and renovation plan. Prioritization of detention facilities construction projects will be based on the data gathered during the development of the facilities needs assessment. The Bureau has not been funded for new construction of detention facilities.

**Subject: RE: Community Emergency Planning July 12**  
**Date: Monday, July 9, 2007 8:36 AM**  
**From: Jan.Bennett@aps.com**  
**To: <MCurtis401@aol.com>, <ZORB746@aol.com>, <tlongtin@mohaveaz.com>**  
**Conversation: Community Emergency Planning July 12**

Mike,

Thanks for your note from June 26th. It really was quite timely, as I have been doing a little prep work for the upcoming meeting with APS, UNS and MEC that will occur on June 12th.

While doing this prep work I discovered that UNS has an existing relationship with the BIA where they have willingly provided emergency support during outages for the Havasupai Tribe in Supai. This relationship is working well and, when asked, UNS has responded quickly to outages that the tribe has experienced in the last few years. One problem we have discovered is that unfortunately UNS may not be notified of an outage until days after the occurrence, meaning many customers have been without power unnecessarily for extended periods of time. We believe that it would be best for Mohave Electric, as the energy provider, be the initial contact for outages in Supai.

UniSource / TEP and APS are both willing and able to provide emergency support to Mohave Electric the Havasupai Tribe or the BIA. There are several questions that need to be addressed; items we hope to clarify when we meet with UniSource / TEP and Mohave Electric on July 12th. That meeting is scheduled for Flagstaff; details will be forthcoming. This is a meeting of the Operating folks for the three companies; neither UniSource / TEP nor APS is planning on bringing attorneys, and I would respectfully ask that Mohave send only their operating folks as well.

Let me touch a little bit on emergency planning, both from an electrical restoration standpoint and a community emergency standpoint. Your note from yesterday, and other correspondence you've sent over the past several months, appears to be driving towards an all-encompassing agreement of sorts. Candidly, Michael, I don't think things need to be that complicated. As it relates to Havasupai, I envision a simple letter of understanding between Mohave Electric, UniSource / TEP and APS that expresses our mutual desire to assist the BIA if need be. A copy of that letter, when finalized will be shared with Havasupai and with the BIA. The parties will help compile a list of emergency contact names and phone numbers, and I feel confident that if future electrical emergencies should occur on Havasupai, and the call

**comes from any of Havasupai, BIA or Mohave, that UniSource / TEP and / or APS will be able to assist. We each, of course, have our own customers to consider first; however, I find it difficult to imagine any event, except something catastrophic, within which UniSource / TEP and / or APS won't be able to provide assistance.**

**The same can be said for community emergency planning. As an example, APS has a structured Dry Ice plan and corresponding relationships with dry ice providers for those rare occasions when we need to execute such emergency response for our own customers. We are more than happy to leverage those plans and relationships to assist customers of other utilities should such needs arise - all that needs to occur is a simple phone call to APS. I don't believe we need a comprehensive emergency planning document to accomplish such mutual aid.**

**Your note expresses concern from the Commissioners and Governor's office as it relates to other portions of the state where utilities have experienced prolonged power outages. Again, I don't believe a comprehensive document that sits on someone's bookshelf and quickly becomes outdated is the best approach in addressing such concerns. APS has never - I repeat, never - turned down requests for support from other in-state or out of state utilities when they have been faced with emergency situations and I believe the same to be true for UniSource/TEP. We also have standing letters of mutual aid with utilities like Salt River Project, UniSource / TEP, etc and have sent crews to California and as far away as Florida when asked for help. If some of the smaller Cooperatives, Electrical Districts or entities like the San Carlos Irrigation Project ("SCIP", i.e, the BIA in Casa Grande) are interested in ensuring they have APS' support, we will be happy to meet with them, exchange the necessary emergency contact information and reassure them that APS will be there to support them in any way possible (electrical or otherwise), understanding that we first must meet the needs of our own customers. I don't believe mutual aid compacts need to be any more complicated than that.**

**Give it some thought. In the meantime, we'll see Tom Longtin in Flagstaff on July 12th. And, in the meantime, if any of your clients or contacts have emergency issues and need our assistance, let us know. We'll do our part.**

**Jan**

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**From:** MCurtis401@aol.com [mailto:MCurtis401@aol.com]

**Sent:** Tuesday, June 26, 2007 2:20 PM

**To:** Bennett, Jan H(H09610); ZORB746@aol.com; tlongtin@mohaveaz.com

**Subject:** Community Emergency Planning July 12

To: Jan Bennett; Tom Longtin;

Regards July 12 meeting at APS

Mohave looks forward to attending the July 12 meeting. Tom Longtin and I understand it may slip but we hope not. For now the focus is on being at your offices on July 12. You indicate you are contacting UniSource/TEP.

Concerning emergency planning in the area it is important to note Commissioner Mayes and the Governor's Office were interested, not just in the Havasupai/Hualapai, but also whether or not, in the event of a community county emergency, the three utilities and the BIA have a type of plan on how to help each other and, if necessary, the affected communities (she calls it a "Katrina" plan). The BIA can be contacted at Mr. James E. Williams, Superintendent, Office of the Superintendent, United States Department of Interior, Bureau of Indian Affairs, Truston Canyon Agency, PO Box 37, Valentine, Arizona 86437. It should attend.

In subsequent meetings, the Commissioner has indicated her displeasure at prolonged electric outages at different parts of the State (ranging from Mohave and Coconino counties, the Navajos in Navajo country, Graham County Arravaipa Canyon, and Nogales) and wants to know how utilities are planning to respond to restore electric service and also help meet human needs with the initial focus being the Mohave-Yavapai-Coconino county areas. On two occasions Commissioner Mayes expressed concern not only about the Hualapai/Havasupai outages and the human crisis but also about the time it took to bring relief and restoration of service to the Arravaipa Canyon area of Graham County last year when an outage occurred; and Commissioner Hatch-Miller expressed concern about service to the Navajos.

In subsequent appearances, the Commissioner indicated she is also interested in how the BIA is responding and what the BIA is doing to prevent a

problem on their system (which covers the Casa Grande Valley and the Colorado River Indian Tribes as well as Hualapai and Havasupai areas) and suggested it be invited. Alan Stephens, the Governor's Chief of Staff and Marnie Hodakwen, the Governor's Policy Advisor for Tribal Affairs have also asked that a comprehensive group meet to discuss emergency response capabilities and the reliability issues in the entire area, including the Hualapai/Havasupai.

Since Western has offered to be of assistance in the region, Jan might also consider an invitation addressed to Mr. J. Tyler Carlson, Regional Manager, Western Area Power Administration, PO Box 6457, Phoenix, Arizona 985005-6457 ([Carlson@wapa.gov](mailto:Carlson@wapa.gov)).

Michael Curtis

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**Email Firewall made the following annotations**

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